

APPEAL NO. 041111
FILED JUNE 18, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on April 12, 2004. The hearing officer determined that the respondent (claimant) sustained a compensable left knee injury on _____, that the claimant had disability from August 19, 2003, through the date of the CCH, and that the appellant (carrier) is not relieved of liability because the claimant timely notified the employer of the injury.

The carrier appeals the disputed issues on sufficiency of the evidence citing conflicting evidence. The claimant responds, urging affirmance.

DECISION

Affirmed.

The claimant, a scaffold builder, testified that he injured his left knee on _____, when he slipped on some scaffolding and twisted his left knee. The claimant testified that he immediately reported his injury to the forman, (JL), who said that he would take care of it. The claimant also testified that he made no further reports of his injury because he was afraid of losing his job. The claimant continued to work and said that he sought medical attention for the first time on May 12, 2003, at a hospital emergency room. The claimant was eventually diagnosed with a "bucket tear" (and other left knee conditions) of the left knee. The period of disability is as assessed by the treating doctor.

There was conflicting and contradicting evidence. JL denied receiving notice and the carrier points to conflicting and contradictory medical histories to indicate that no injury occurred as testified to by the claimant. In essence, the crux of the matter purely and simply boils down to what evidence one chooses to believe.

The questions of whether the claimant sustained a compensable injury, whether he timely reported his injury, and whether he had disability, presented questions of fact for the hearing officer to resolve. By statute the hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the fact finder, the hearing officer was charged with the responsibility of resolving the conflicts and inconsistencies in the evidence and deciding what facts the evidence had established. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). The hearing officer may believe all, part or none of the testimony of any witness. Aetna Insurance Company v. English, 204 S.W.2d 850 (Tex. Civ. App.-Fort Worth 1947, no writ). The hearing officer was acting within her province as the fact finder in resolving the conflicts and inconsistencies in the evidence in favor of the claimant. Nothing in our review of the record reveals that the challenged

determinations are so against the great weight of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986). Accordingly, no sound basis exists for us to disturb those determinations on appeal.

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **PACIFIC EMPLOYERS INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**ROBIN M. MOUNTAIN
6600 CAMPUS CIRCLE DRIVE EAST, SUITE 300
IRVING, TEXAS 75063.**

Thomas A. Knapp
Appeals Judge

CONCUR:

Chris Cowan
Appeals Judge

Gary L. Kilgore
Appeals Judge